



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: PR Newswire

File: B-279216

Date: April 23, 1998

Daniel Selnick for the protester.

Catherine S. Anderson, Esq., Executive Office of the President; David R. Kohler, Esq., and Audrey H. Liebross, Esq., Small Business Administration, for the agencies. Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Procurement for news distribution services was properly set aside for exclusive small business participation where the contracting officer reasonably determined that the agency could expect offers from at least two responsible small business concerns and that award would be made at a fair market price.

DECISION

PR Newswire protests the Executive Office of the President's (EOP) issuance as a total small business set-aside of solicitation No. EOPOA-97-07, for electronic news distribution services. PR Newswire contends that the set-aside is improper and tantamount to a sole source award because there is only one small business capable of performing those services.

We deny the protest.

The successful contractor is to distribute the full text of White House documents including, but not limited to, press releases, press advisories, schedules, speech texts, presidential proclamations, backgrounds, and transcripts of media briefings and other news events. All documents must be distributed within 1 hour of receipt by the contractor. The contractor will accept data from the White House via Internet, e-mail, fax transmission, and computer disk. Services must be available 24 hours per day, 7 days per week.

PR Newswire contends that the only entities technically capable of performing this contract are PR Newswire (which is not a qualifying small business), and one small business, U.S. Newswire (the incumbent). PR Newswire asserts that these two offerors were the only two "truly" competent offerors in a "past similar procurement." All other submissions were allegedly withdrawn by the offerors or eliminated from the competition for "limitations in competency."

Under Federal Acquisition Regulation (FAR) § 19.502-2(b), a procurement with an anticipated dollar value of more than \$100,000 must be set aside for exclusive small business participation when there is a reasonable expectation of receiving offers from at least two responsible small business concerns and that award will be made at a fair market price. American Med. Response of Conn., Inc., B-278457, Jan. 30, 1998, 98-1 CPD ¶ 44 at 2. Unless such a reasonable expectation exists, a total small business set-aside cannot be issued. FAR § 19.502-2(b); see FKW Inc., B-249189, Oct. 22, 1992, 92-2 CPD ¶ 270 at 2. The use of any particular method of assessing the availability of small businesses is not required so long as the agency undertakes reasonable efforts to locate responsible small business competitors; in this regard, the decision whether to set aside a procurement may be based on an analysis of factors such as the prior procurement history, the recommendations of appropriate small business specialists, and market surveys which include responses to Commerce Business Daily (CBD) announcements. Litton Electron Devices, 66 Comp. Gen. 257, 259 (1987), 87-1 CPD ¶ 164 at 3. Because a decision whether to set aside a procurement is a matter of business judgment within the contracting officer's discretion, our review generally is limited to ascertaining whether that official abused his or her discretion. CardioMetrix, B-271012, May 15, 1996, 96-1 CPD ¶ 227 at 2.

In this case, prior to issuing the solicitation, EOP took into consideration the fact that technological advances had been made in the data distribution industry in the 3 years since the last time the effort was competed. The contracting officer observed that the market was "expanding daily with more high tech capabilities being offered by more small businesses." Based on these technological advances and EOP's policy to provide maximum opportunities to small businesses, EOP conducted an informal market survey to determine if the procurement was appropriate for set-aside. The survey included a review of the EOP small business specialist's file of standard forms 129 for Standard Industrial Classification (SIC) Code 7375, "Information Retrieval Services." This review identified more than 30 interested small business concerns in this SIC Code with the potential capability to perform the required services. Since prior experience was not a prerequisite for this acquisition, the contracting officer determined to issue the solicitation as a total small business set-aside. To this end, EOP synopsised the solicitation in the CBD on July 15, 1997. Twenty-nine businesses, including at least seven small businesses, requested copies of the solicitation.

Here, the protester concedes that there is at least one small business capable of performing the contract, U.S. Newswire. In addition to the existence of this small business, EOP's internal market survey and the responses to the CBD notice indicated that there were significantly more than two more small businesses interested in competing under this acquisition. Further, in our view, the contracting officer acted reasonably in finding that the development of technological advances in this service industry strongly suggests that these small businesses may now have

the capability to perform the contract.¹ Under these circumstances, the contracting officer reasonably concluded that there were at least two capable small businesses who would submit reasonably priced offers in response to the solicitation. Accordingly, we have no basis to conclude that the contracting officer abused his discretion in deciding to set aside this procurement.

Our conclusion is not changed by PR Newswire's assertion that even if these small businesses compete, they will not be able to meet the agency's needs. In this regard, while the standards of responsibility enunciated in the regulations may be relevant in making a set-aside determination, the contracting officer need not make determinations tantamount to affirmative determinations of responsibility as part of this process; the agency is only obligated to make an informed business judgment that there is a reasonable expectation of receiving reasonably priced offers from a sufficient number of responsible small businesses. American Med. Response of Conn., Inc., supra, at 2-3. Moreover, while the protester's argument is premised on its position that the potential small business offerors lack relevant experience, the solicitation did not contain a requirement that offerors have any particular prior experience in disseminating news releases.²

The protest is denied.

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¹In this regard, U.S. Newswire has submitted a list of 19 businesses, identified as small, in the field of news release distribution, whose advertisements appeared "in a recent trade magazine." We have reviewed advertisements from two of these small business concerns (Daybook News and Capitol Newswire) and note that both of them compare their services with PR Newswire's capabilities.

²PR Newswire suggests that a requirement for prior experience is evidenced by the solicitation provision that offerors provide descriptions of "similar contracts performed within the past 3 years." While the agency required submission of and intends to evaluate past performance information, such an evaluation criterion does not mean that an offeror is required to possess prior experience in particular contract performance areas in order to be eligible for contract award.